

SECRETARY OF STATE[721]

Adopted and Filed

Rule making related to petitions for rule making and waivers

The Secretary of State hereby amends Chapter 8, “Petitions for Rule Making,” and Chapter 10, “Waiver and Variance Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 17A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

These amendments update two chapters of the Secretary of State’s rules in accordance with changes made by 2020 Iowa Acts, House File 2389, sections 7 and 10. The changes call for deletion of the word “variance” when the word is used in relation to “waiver.” The changes also call for sharing the disposition of rule-making petitions with the Administrative Rules Review Committee.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 27, 2021, as **ARC 5397C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Secretary of State on July 8, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on September 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 8.4(1) as follows:

8.4(1) Within 30 days after the filing of a petition, the agency must submit ~~a copy of the petition and any accompanying brief~~ the petition, any accompanying brief, and the disposition of the petition to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

ITEM 2. Amend **721—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 17A.7 ~~as amended by 1998 Iowa Acts, chapter 1202.~~

ITEM 3. Amend **721—Chapter 10**, title, as follows:

WAIVER AND VARIANCE RULES

ITEM 4. Amend rule 721—10.1(17A) as follows:

721—10.1(17A) Definition. For purposes of this chapter, a “waiver ~~or variance~~” means action by the agency which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 5. Amend rule 721—10.4(17A) as follows:

721—10.4(17A) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule 721—10.6(17A), the agency may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the agency finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

ITEM 6. Rescind rule **721—10.12(17A)**.

ITEM 7. Renumber rules **721—10.13(17A)** to **721—10.16(17A)** as **721—10.12(17A)** to **721—10.15(17A)**.

[Filed 7/8/21, effective 9/1/21]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.